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December, 17 20024

Honorable Natasha C. Merle
Judge Steven I. Locke
U.S. District Court Eastern District of New York
225 Cadman Plaza E
Brooklyn, NY 11201

Case No. 20-cv-04026-NCM-SIL

**Defendants, Response to the Court's Report and Recommendation (R&R) and Order
Dated December 10, 2024**

Honorable Magistrate Judge Steven I. Locke.

Defendant Massimo Gammella respectfully submits this response to address the Court's Report and Recommendation dated November 19, 2024 (Dkt. No. 97) and the subsequent Electronic Order dated December 10, 2024, regarding Plaintiff's failure to file proof of service of the R&R as required by December 16, 2024.

1. Plaintiffs' Consistent Pattern of Non-Compliance

Defendant respectfully brings to the Court's attention that plaintiffs' counsel, Mr. steven Moser, has repeatedly failed to comply with Court Rules, directives, and deadlines throughout the course of this litigation, even missing 7 conference calls. This is not an isolated occurrence, but rather part of an ongoing pattern of neglect and non-compliance, including:

Failure to properly serve Documents: Plaintiffs' counsel has on multiple occasions failed to serve defendants with court filing, whether by email or first-class mail, as required. Each time, Plaintiffs have been allowed to remedy these failures, causing unnecessary delays and prejudice to defendants.

Failure to meet Court-Imposed deadlines: Plaintiffs' repeated delays, such as the current failure to file proof of service of the R7R, demonstrate an ongoing disregard for this Court's orders and procedural rules.

Failure to Notify Defendants: Plaintiffs, counsel has habitually failed to notify defendants promptly of filings, motions, and other court related matters, further impairing Defendants' ability to respond and defend themselves in this matter.

2. The Motion for Default Judgment against the Corporation Rosso Uptown Ltd. Should be Denied With Prejudice.

Given Plaintiffs' repeated failures, Defendant Massimo Gammella respectfully request that the Court **deny Plaintiffs' motion for a default judgment with prejudice**, rather than without prejudice.

Allowing Plaintiffs, to repeatedly refile or renew their motion, despite their ongoing non-compliance, only prolongs this litigation and **rewards** Plaintiffs' counsel's failure to follow Court orders. A dismissal with prejudice would serve as an appropriate consequence for Plaintiffs' continued failure to meet their obligations under the Federal Rules of Civil Procedure and this Court's directives.

3. Conclusions

For the foregoing reasons,
Defendant respectfully requests that the Court:

1. Take notice of Plaintiffs' repeated failure to comply with Court Orders and rules.
2. Deny Plaintiffs' motion for a default judgement with prejudice
3. Grant such order and further relief as the Court deems just and proper.

Respectfully submitted,

Massimo Gammella

A handwritten signature in black ink, appearing to read 'Massimo Gammella', written over a horizontal line.